

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

3. Cleveland's report does not address who is a person of ordinary skill in the art, but yet he opines that one of ordinary skill in the art would determine the '201 patent application do not support certain claim limitations.

4. Not only are Cleveland's opinions conclusory, but the opinions are also uninformed. Cleveland has no relevant skill, training, experience, or education pertaining to the subject matter of the '201 Patent. Because Transamerica cannot meet its burden and show that Cleveland's satisfies Rule 702, the Court should act as the gatekeeper and preclude Cleveland from testifying at trial.

5. For these same reasons, the Court should also disregard Cleveland's report and his opinions for summary judgment purposes. *See Schuller v. Great-West Life & Annuity Ins. Co.*, 2005 U.S. Dist. LEXIS 37264, at \*18 (W.D. Iowa 2005) (reasoning at the summary judgment stage that: "The affidavit of an 'expert' may also be stricken if the individual does not meet the standards of [Rule 702] and *Daubert* . . . ").

In support of this Motion, Lincoln is relying upon the following materials:

- (a) A supporting brief that is being contemporaneously filed with this Motion as an electronic attachment with the same docket number under Local Rule 7(d); and
- (b) Materials cited in Lincoln's supporting brief. All cited materials either accompanied Transamerica's summary judgment motion and are cited as "APP" or accompany Lincoln's summary judgment appendix and are cited as "*LinApp*". Lincoln's summary judgment appendix is being contemporaneously filed with this Motion.

For the reasons stated in this Motion and in Lincoln's accompanying brief, Lincoln respectfully requests that:

- (1) Disregard and exclude Cleveland's opinions and his accompanying report (APP 1652-1676 and APP 1918-1942) when considering Transamerica's summary judgment motion; and

- (2) Preclude Cleveland from testifying at trial regarding Transamerica's written description defense under 35 U.S.C. §112, ¶1 and new matter defense under 35 U.S.C. §132(a).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above and foregoing document has been served this 26th day of September, 2008, via the Court's ECF system to the following counsel of record:

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